

No. 47391-7-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

ANDREW CHRISTOPHER WATKINS,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 87-1-02347-0
The Honorable Vicky Hogan, Judge

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

I.	STATEMENT OF THE CASE	1
II.	ARGUMENT & AUTHORITIES	2
III.	CONCLUSION	5

TABLE OF AUTHORITIES

CASES

<u>Adkins v. Aluminum Co. of Am.</u> , 110 Wn.2d 128, 750 P.2d 1257 (1988)	4
<u>State v. Johnson</u> , 148 Wn. App. 33, 197 P.3d 1221 (2008)	2

OTHER AUTHORITIES

Former RCW 9.94A.220	2, 3
RAP 2.2	2
RAP 2.4	4
RCW 9.94A.637	2, 3

III. STATEMENT OF THE CASE

Andrew Watkins was released from confinement on June 27, 1988. (CP 384, 458) A memorandum notifying Pierce County Superior Court Judge Bruce Cohoe of Watkins' pending release was filed on June 23, 1988. (CP 384) On November 21, 1989, the Department of Corrections (DOC) sent a notice to Judge Cohoe regarding Watkins' status. (CP 458) According to that report, which was filed in the Superior Court on November 29, 1989, Watkins had failed to make any payments toward his LFO obligation. (CP 458) However, Pierce County Superior Court Clerk's records show that Watkins actually made his final LFO payment on October 13, 1989. (CP 591)

On December 13, 1990, over a year after first receiving notice, Judge Cohoe finally signed a Certificate and Order of Discharge, certifying that Watkins had completed all of the requirements of his sentence, ordering his discharge from DOC supervision, and ordering that his civil rights be restored. (CP 489) That Certificate was filed in the Superior Court on December 17, 1990. (CP 489)

Watkins filed three different motions in the Superior Court seeking orders correcting the effective date of his certificate of

discharge. All of these orders were denied. (CP 580-94, CP 595, 596-600, CP 601, CP 602-10, CP 611-12)

IV. ARGUMENT & AUTHORITIES

The State first asserts that an order denying Watkins' motion to correct the effective date of his discharge is not an appealable order. (Brief of Respondent at 3-4) However, a Commissioner of this Court has already determined, in a ruling dated November 20, 2014, that Watkins can appeal this issue.

Regardless, the State's assertion is incorrect because the certificate of discharge, and the denial of a request to have the record accurately reflect the date of discharge, is the type of final order to which the Rules of Appellate Procedure applies. The Rules of Appellate Procedure authorize an appeal from a "final order made after judgment that affects a substantial right." RAP 2.2(a)(13). An offender is entitled by statute to a certificate of discharge when the "offender has completed all requirements of the sentence." RCW 9.94A.637(1)(a) (the court "shall discharge the offender and provide the offender with a certificate of discharge"); see also Former RCW 9.94A.220(1) (1989); State v. Johnson, 148 Wn. App. 33, 39, 197 P.3d 1221 (2008) ("an offender is reasonably entitled to and eligible for the issuance of the certificate of

discharge”). And RCW 9.94A.637(5) specifically states that “[t]he discharge shall have the effect of restoring all civil rights.” See *also* Former RCW 9.94A.220(3) (1989). Thus failure to timely enter a certificate of discharge, as required by the statute, certainly affects an offender’s substantial rights because it delays the restoration of his or her valued civil rights.

Next, the State argues that the Superior Court did not abuse its discretion when it denied Watkins’ motion for a nunc pro tunc order because that type of order is not appropriate in this case. (Brief of Respondent at 5-7) But Watkins is not arguing on appeal that he was entitled to a nunc pro tunc order, and is not arguing on appeal that a nunc pro tunc order is appropriate in this case. Rather, Watkins is arguing that the Superior Court abused its discretion when it repeatedly refused to grant any relief and to enter any order amending the effective date of his certificate of discharge.

The State does not address Watkins’ argument that he is entitled to a general (non-nunc pro tunc) order correcting the effective date. The State may have limited its argument to the nunc pro tunc issue under the mistaken impression that this final motion and order were the only ones at issue on appeal, because the

Notice of Appeal filed by a *pro se* Watkins only refers to the trial court's final act of denying his motion for a nunc pro tunc order. (CP 613) But Watkins filed several motions seeking relief prior to the entry of this last order, all of which were denied. (CP 580-94, 595, 596-600, 595, 602-10, 611-12)

Under RAP 2.4(b), the Superior Court's rulings on those motions are reviewable even though they were not specifically designated in the Notice of Appeal:

The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review.

In Adkins v. Aluminum Co. of Am., the Court held that the requirements of RAP 2.4(b) were satisfied because:

The final order [designated in the notice of appeal] would not have occurred absent the trial court's [earlier] decision granting the motion for a mistrial; thus the decision prejudicially affected the final decision which was designated in the notice of appeal. Obviously the trial court's action granting the mistrial occurred before the Court of Appeals accepted review."

110 Wn.2d 128, 134-35, 750 P.2d 1257 (1988). Similarly here, the requirements of RAP 2.4(b) are satisfied because the order denying Watkins' request for a nunc pro tunc order would not have occurred

had the Superior Court granted either of Watkins' earlier motions seeking relief on the same issue. And the prior rulings and orders were made before this Court accepted review of Watkins' case. Therefore, Watkins' appeal is not limited to reviewing the Superior Court's order denying Watkins' final motion for a nunc pro tunc order.

Finally, the State argues that the record is insufficient for review of the issues raised by Watkins. (Brief of Respondent at 7-9) But once again, the State is incorrect. The record clearly shows that, on November 21, 1989, the Superior Court received notice from DOC that Watkins was entitled to a certificate of discharge upon payment of his LFOs. (CP 458) The record also shows that Watkins fulfilled his LFO obligations on October 13, 1989. (CP 591) And the record shows that the Superior Court took no action, and failed to enter the certificate of discharge that Watkins was entitled to, for over a year. (CP 489) The record clearly shows that Watkins is entitled to relief, and is entitled to an order amending the effective date of his certificate of discharge.

V. CONCLUSION

All of the orders denying Watkins requests for a corrected effective date are appealable as a matter of right under the Rules of

Appellate Procedure, and are reviewable even though they were not specifically designated in the Notice of Appeal. The record is also sufficiently complete to review the merits of the issues raised, and show that Watkins is entitled to the relief he seeks.

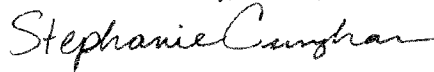
DATED: September 21, 2015



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CERTIFICATE OF MAILING

I certify that on 09/21/2015, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Andrew C. Watkins, 425 South Tacoma Way, Tacoma, WA 98402.



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